



U.S. Department of Justice
Immigration and Naturalization Service

HQOPS 50/12.2


Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

APR 27 2001

MEMORANDUM FOR REGIONAL DIRECTORS

FROM:


Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT:

Guidance on Initiation of Removal Proceedings and Section
245(i) of the Immigration and Nationality Act

This memorandum provides guidance on the initiation of removal proceedings against individuals who are eligible to adjust to permanent resident status under section 245(i) of the Immigration and Nationality Act (the INA). It instructs Immigration and Naturalization Service (INS) field offices not to initiate removal proceedings against an individual who is an alien eligible for adjustment under section 245(i) based solely on an immigrant petition, labor certification application, or application for adjustment of status filed by, or on behalf of, that alien on or after the date of this memorandum seeking to legalize the alien's status under section 245(i).

Background

On December 21, 2000, President Clinton signed the Legal Immigration Family Equity Act (the LIFE Act) into law. Among other provisions, the LIFE Act temporarily reauthorized section 245(i) of the INA. This "new" section 245(i) of the INA allows certain aliens otherwise eligible for lawful permanent resident status based on an immigrant petition or application for labor certification filed on or before April 30, 2001, but who would not normally be able to adjust to permanent resident status in the United States as a result of having entered the United States without inspection or certain other immigration violations, to adjust status when a visa number becomes available. Aliens adjusting under section 245(i) must pay \$1,000 in addition to the normal application fee for adjustment under section 245.

In general, an alien is a qualified individual for the purpose of adjusting status under the "new" section 245(i) of the INA if he or she:

- (1) is eligible to receive an immigrant visa based on a family relationship or job offer, and is admissible to the United States for permanent residence;
- (2) entered the United States without inspection, or is an alien described in section 245(c) of the INA (including aliens who have overstayed an admission, violated the terms of

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their status, worked without authorization, entered as crewmen or under the Visa Waiver Pilot Program, or entered in transit without a visa);

- (3) is the beneficiary of an immigrant petition or application for labor certification filed on or before April 30, 2001, and
- (4) in the case of an immigrant petition or application for labor certification filed after January 14, 1998, was physically present in the United States on December 21, 2000.

No deadline applies to the qualified individual's filing of an application for adjustment of status under section 245(i), but that application cannot be filed until the immigrant petition is approved and a visa number is available.

Guidance

I have decided to exercise the prosecutorial discretion of the INS in a manner that appropriately balances our immigration enforcement responsibilities with our responsibility to avoid actions that unnecessarily may deter eligible aliens from seeking to legalize their status under section 245(i). Consequently, field offices shall not initiate removal proceedings against an alien who is eligible for adjustment under section 245(i), if such action is based solely on the filing of an immigrant petition, labor certification application, or application for adjustment of status filed by, or on behalf of, that alien on or after the date of this memorandum seeking to legalize the alien's status under section 245(i). This prohibition applies during the period of time the petition or application is pending, but ends if and when the petition or application is denied.

This guidance is intended to ensure that individuals eligible for the benefits of section 245(i) of the INA, and relatives or employers eligible to file immigrant petitions or labor certifications on their behalf, will not be deterred from initiating the process to legalize their status through fear that their filing will be used to identify and remove them. It is not intended to inhibit the INS' responsibility to detect and deter fraud, or to remove criminal or other removable aliens who are not eligible for adjustment under section 245(i) because they are not admissible to the United States for permanent residence. Suspected fraudulent filings and cases involving such ineligible aliens should be handled in accordance with existing priorities, procedures and instructions. Additionally, unauthorized aliens encountered in the course of routine enforcement actions, or who otherwise come to the attention of the INS other than by reason of the fact they are seeking to legalize their status under section 245(i), should continue to be processed according to established procedures, whether or not they are seeking to adjust their status under section 245(i). Such established procedures include the Commissioner's November 17, 2000, memorandum entitled Exercising Prosecutorial Discretion.

This memorandum is intended solely for the guidance of INS personnel in performing their duties. It is not intended to, does not, and may not be relied upon to create any right or

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benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Questions regarding this guidance should be directed to Acting Assistant Commissioner for Investigations Joseph R. Greene at (202) 307-1278.